

16 September 2013

Breaking the links between natural resources and conflict: The case for EU regulation

A civil society position paper

This group of 59 European and global non-governmental organisations calls on the European Commission to adopt legislation requiring European business entities to conduct supply chain due diligence in order to ensure that they do not contribute to conflict financing or human rights abuses in the production and trade in natural resources.¹

Such legislation should, at a minimum, meet international standards endorsed by the United Nations and by the Organisation for Economic Cooperation and Development and reflect principles contained within the European Union's own Corporate Social Responsibility strategy.²

The global nature of modern supply chains means that natural resources that have fuelled some of the world's most brutal conflicts are bought and traded internationally, including by companies operating in the European Union (EU). EU-based companies using natural resources must do more to prevent their operations from directly or indirectly causing harm. A legislative framework is needed to clarify the responsibilities of European companies and to provide the basis for appropriate oversight by regulators, markets and consumers.

The EU was awarded the Nobel Peace Prize in 2012 for its advancement of peace and human rights. The EU is also the world's largest trading bloc and

is home to many leading global corporations that trade in natural resources and manufacture raw materials.ⁱ Furthermore, the European Commission (EC) and Member States together provide more than half of all worldwide development aid, including to countries affected by natural resource-fuelled conflicts.³ The size of the European market means that the EU is well placed to influence global supply chains and promote transparent and responsible sourcing in other jurisdictions.

EU Member States have a duty under international and European human rights law to ensure that those businesses operating within their jurisdiction are not causing or contributing to human rights abuses, directly or indirectly, through their business activities. Legal requirements are already being imposed on how companies manage supply chains of natural resources by countries outside the EU, such as the United States (US), in an effort to interrupt instances of conflict financing.

EU Member States must make this a priority. The importance of transparent and responsible management of natural resources and their supply chains was reiterated in the final declaration of the June 2013 G8 Summit.⁴ The European Commission recently launched a public consultation on a 'possible EU initiative on responsible sourcing of minerals originating from

ⁱ We use the terms 'natural resources' and 'raw materials' throughout this document to refer to natural resources, including minerals, which, through production or trade, may fund or fuel conflict, instability or human rights violations.

conflict-affected and high-risk areas! Recent revisions to the EU Transparency and Accounting Directives and the Commission's public commitments to greater support for the Organisation for Economic Cooperation and Development's (OECD) Guidelines for Multinational Enterprises and Due Diligence Guidance are important steps towards this goal. But these measures do not go far enough.⁵ We recommend that the European Commission introduce legislation that:

- Creates a **legally binding obligation** on business to conduct **supply chain due diligence** to identify and mitigate the risk of conflict financing and human rights abuse;
- Is based on the **relevant international instruments**, including the International Bill of Human Rights, International Labour Organization (ILO) core treaties and other international human rights law and standards,⁶ International Humanitarian and Criminal Law, and the OECD Due Diligence Guidance for Conflict-Affected and High-Risk Areas (OECD Guidance);
- **Recognises the State duty to protect** human rights as defined by International Human Rights Law, the **company responsibility to respect** human rights as contained within the United Nations (UN) Guiding Principles and the need to facilitate victims' access to justice;⁷
- Applies to **all segments of the supply chain**;⁸
- Has a **global geographical scope**, meaning that due diligence should be conducted on supply chains originating in any conflict-affected and high-risk area;⁹
- Has a **broad material scope applicable to all natural resources**;¹⁰
- Is founded on a **risk-based approach** that includes and emphasises a risk mitigation framework and considers impacts on individuals and communities;
- **Complements existing EU initiatives and legislation** to promote transparency and promote sustainable development;
- Forms part of a **wider comprehensive approach** that includes measures to prevent environmental

destruction and associated livelihoods and to reinforce governance and encourage security sector and mining reform in natural resource-rich developing countries.

Breaking the links between natural resources and conflict

For decades the trade in minerals, precious stones and other commodities has played a central role in funding and fuelling some of the world's most brutal conflicts, often further weakening already fragile States. Revenues from the trade in natural resources can give abusive armed groups the means to operate and can provide off-budget funding to State security forces and corrupt officials hiding behind opaque company ownership structures. Armed groups and security forces exerting direct control at points of extraction or trade can also generate millions of dollars in cash. In many instances, these groups are responsible for grave human rights violations.¹¹

In the last sixty years, at least forty percent of all intrastate conflicts have had links to natural resources, and the presence of natural resources makes conflicts twice as likely to recur.¹² Growing global competition over access to scarce resources in developing countries, many of which are prone to economic and political instability, is likely to increase conflict risks.¹³

Investigations carried out by non-governmental organisations (NGOs), the UN and others show that natural resources are being sourced in a number of areas where such activities pose the very real risk of funding conflict, instability and human rights abuses. These materials enter global supply chains from where they are traded, processed and manufactured into a wide variety of consumer and industrial products.

Recent efforts to break the links between international supply chains and violent conflict have focused primarily on eastern Democratic Republic of Congo (DRC). Action is also required to address the risk of European companies sourcing

natural resources from other conflict-affected and high-risk areas. The cases below demonstrate the global nature of the problem.

- In **Colombia**, where conflict has cost over 218,000 lives, internally displaced between 4.7 and 5.7 million people and resulted in the forced disappearance of over 25,000 people, tantalum, wolframite, coal and gold mines and trading routes are controlled and taxed by armed groups.¹⁴ The Revolutionary Armed Forces of Columbia (FARC), the main group involved in illegal mining activities, derive up to 20 percent of their economic resources from control of Columbia's gold trade. Other groups such as the ELN and BACRIM profit from the trade to a lesser degree.¹⁵ In mining areas, control over land has become increasingly militarised and a source of conflict,¹⁶ while 80 percent of the human rights violations that take place in Colombia occur in areas where minerals and oil are extracted.¹⁷ Up to 10 percent of the Colombian population, particularly those living in remote areas, remain directly affected by the conflict.¹⁸
- The trade in tin, tantalum, tungsten and gold has fomented violent conflict in the eastern provinces of **North and South Kivu, DRC** for almost a decade and a half. Although not the root cause of the conflict, competition over the control of mines and trading routes has become an incentive for warring parties to keep fighting. Rebels and members of the national army have made millions of dollars through illegal taxation and control of the trade while inflicting appalling suffering on the local population.¹⁹ In southern **Katanga** province abuses against artisanal miners engaged in copper and cobalt extraction remain prevalent, while child labour continues to be a serious problem. Cases of modern slavery have been documented in mines in North and South Kivu.²⁰ Miners receive very little for the minerals they extract and face systemic exploitation. The ore is sold through supply chains that includes companies in the central African region and globally.²¹
- **Burma** is exceptionally rich in gems, including rubies and jadeite, as well as metals such as copper, tin, tungsten and gold.²² The country's mining industry has been heavily militarised for decades, with members of the national army exerting control over mining, marketing and export operations.²³ Burma's military, the *Tatmadaw* has one of the worst human rights records of any army in the world. It regularly faces credible accusations of killings, torture, rape, forced labour, forced displacement and other crimes.²⁴
- Evidence of links between diamond mining companies and security forces loyal to **Zimbabwe's** ruling Zanu-PF party points to a risk that diamond revenues are providing off budget funding to abusive groups. Members of the Zimbabwean military and police are board members or beneficial owners of some of the country's lucrative diamond mines. The military and police have been repeatedly accused of carrying out widespread violence against the civilian population.²⁵
- In the **Central African Republic (CAR)**, there have been reports that the Seleka rebel coalition used diamond revenues to fund the recent coup.²⁶ Rebel soldiers have been accused of committing serious human rights violations since taking power.²⁷ CAR was suspended from the Kimberley Process rough diamond certification scheme following the coup, but porous borders mean that diamonds will likely continue to reach international markets, raising questions about who may benefit from the revenues.

A strong EU regulation based on the due diligence framework developed by the OECD and the UN would ensure that minerals traded into the EU are not linked to conflict and human rights abuses. If properly implemented, it could also contribute to more stable economies in countries at risk of conflict by promoting transparent and accountable natural resource management.²⁸

Building on existing international standards

The State duty to protect is well established in international law. The International Bill of Human Rights sets out the State's obligation to protect human rights,²⁹ which is further elaborated by other

international human rights treaties and standards including the UN Guiding Principles for Business and Human Rights (UN Guiding Principles) and pillar one of the Protect, Respect, and Remedy Framework.³⁰ Under this obligation States have the primary duty to ensure that businesses operating in conflict areas where there is a high risk of human rights violations are not involved with such abuses. This includes ensuring that companies identify, prevent, and mitigate the human rights risks of their activities.³¹

The UN Guiding Principles and pillar two of the Protect, Respect, Remedy Framework further sets out the responsibilities of business to respect human rights, including the responsibility to conduct human rights due diligence, and refers specifically to the State duty through 'Supporting Business Respect for Human Rights in Conflict-affected Areas', including by:

"(d) ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risks of business involvement in gross human rights abuses."³²

Recent efforts by the UN Security Council, OECD and the United States (US) Congress to develop due diligence standards for companies sourcing minerals from conflict-affected and high-risk areas have led to changes in business practices, particularly in the African Great Lakes Region. The five-step due diligence framework developed by the OECD translates the second pillar of the UN Guiding Principles, relating to corporate responsibility, into an operational guide for companies to use when sourcing from these areas. A broad international consensus has emerged around the OECD Guidance, negotiated by a diverse multi-stakeholder working group and formally adopted in 2011 by OECD member States, including endorsement by EU governments.

Together, these initiatives set a clear and consistent international benchmark and provide companies with a blueprint for the responsible sourcing of natural resources. This is particularly useful to companies operating in complex conflict contexts where the presence of national government is weak or even non-existent and the risk of committing human rights abuses is greater.

Largely in response to the situation in eastern DRC, numerous public and private initiatives that aim to break the links between natural resources, conflict and human rights abuses have referenced the OECD Guidance.

- Section 1502 of the 2010 US Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd Frank Act) requires companies listed with the Securities and Exchange Commission (SEC), including European firms, to carry out due diligence to determine whether their products contain minerals that have funded armed groups in DRC. In an accompanying ruling, the SEC referenced the OECD Guidance as a credible due diligence standard for companies implementing the law.³³
- The UN Security Council has endorsed due diligence standards almost identical to those developed by the OECD for all companies, including European firms, sourcing minerals from the DRC.³⁴
- Domestic legislation adopted in the DRC and Rwanda requires mining and mineral trading companies operating there to undertake due diligence that meets the OECD standard.³⁵
- The regional mineral certification scheme to be launched by the International Conference on the Great Lakes Region (ICGLR), an eleven government regional body in the African Great Lakes region, requires traders to undertake OECD due diligence before being issued with a certificate.³⁶
- Several industry initiatives, such as the London Bullion Market Association's Responsible Gold Guidance, the World Gold Council's Conflict-Free Gold Standard and the electronics industry's Conflict-Free Smelter Programme, have developed additional guidance for members that aims to assist business to meet the standards set out in the OECD Guidance.

The case for regulation

The EU should adopt a regulation based on the OECD Guidance and which builds on the principles for responsible business set out by international human rights laws and standards, including the UN Guiding Principles. An EU regulation that is global in scope and is based on existing frameworks would ensure that all European companies are subject to the same requirements as those in other jurisdictions – notably the US. Such regulations would streamline company compliance, minimising costs, and clarify the standard for compliance against which companies can be assessed by regulators, investors and consumers.

The UN Human Rights Council's adoption of the UN Guiding Principles and the endorsement of the OECD Guidance by EU Member States clearly indicate that governments expect firms to ensure that their operations do not fuel human rights abuses. In reality, however, only a limited number of companies will meet this expectation on a voluntary basis. There is a clear need for regulatory oversight.

A decade and a half of reports detailing the links between minerals and the conflict in eastern DRC, accompanied by complaints brought to OECD National Contact Points and evidence of poorly enforced UN sanctions, have failed to compel companies to look more closely at their supply chains in that region.³⁷

The pressure generated by regulation – as demonstrated by the passage of Section 1502 of the US Dodd Frank Act – is the single most effective force in getting companies to take steps towards more responsible supply chains. Unless required to do so by law, the majority of companies will not make sufficient efforts to ensure that their purchases have not funded conflict, despite existing international obligations.³⁸ Currently more than 80% of European companies that use the four minerals covered by the US law do not have publically available responsible mineral sourcing policies and appear to have done nothing to ensure that the minerals they use do not fund conflict.³⁹

In addition to helping to sever the links between natural resources, conflict and human rights abuses,

European due diligence regulation would have clear beneficial impacts for companies. Transparently managed supply chains will help companies identify and safeguard against environmental degradation and destruction. An EU law would mitigate the risk of reputational damage for European companies and would constitute an important step towards securing sustainable and responsible access by these companies to key natural resources. If properly implemented it could also have a positive impact on local economies in conflict-affected and high-risk areas, cutting off harmful transactions while supporting trade that does not contribute to conflict. The intent of the law should be to enable trade to continue, but not at the cost of gross human rights abuses.

Moreover, it is material to business interests that they respect human rights in their operations since prevailing international human rights standards already call for this. Under the UN Guiding Principles and the OECD Guidance, businesses should already be collecting, monitoring, and discussing actual and potential human rights impacts at management forums. While some companies argue that there may be costs associated with cleaning up supply chains, the alternative – whereby European companies source natural resources and raw materials in a way that exposes local populations in foreign countries to the worst forms of human rights abuse – is morally indefensible. In the long run it is also more expensive – to companies and to States.⁴⁰ Independent studies disprove claims by industry lobby groups that tracing supply chains is too burdensome and costly.⁴¹ That some SEC-listed companies not previously sourcing minerals from eastern DRC have begun to do so *since* US reporting requirements were introduced suggests that the cost of responsible business is not prohibitive.⁴²

A substantial rise in consumer, investor and shareholder awareness and a global shift towards increased transparency of natural resource management means that companies that refuse to source responsibly risk serious damage to their reputations and investments. As regulatory initiatives to address the issue gather pace – notably in the US – European firms could face a commercial disadvantage internationally if they fail to address the risk of their business activities contributing to human rights abuses.

As one of the largest single markets in the world with over 480 million consumers,⁴³ the EU's leverage over global supply chains is significant. Requirements made of SEC-listed companies under Section 1502 of the Dodd Frank Act accompanied by complementary EU supply chain due diligence regulation will create a significant global market shift towards more responsible sourcing of natural resources. Strong legislation in the EU will serve to influence other economic regions to develop similar measures.

What should an EU regulation look like?

For a European regulation to ensure that natural resources placed on the European internal market have been sourced responsibly, the scope of such a regulation must:

- Be wide enough to apply to *all* natural resources, without exemptions,⁴⁴ produced in *any* conflict-affected or high-risk area where extraction or trade risks contributing to or being associated with significant adverse impacts, including human rights abuses and conflict;
- Require any natural or legal person established or registered in the EU who places natural resources or products⁴⁵ containing these on the internal market for the first time to undertake supply chain due diligence that meets the OECD standard.

The content of such a regulation must:

- Be founded on a **risk-based approach** that targets harmful parts of trade, protecting responsible business and avoiding blanket embargoes. This requires companies to assess actual and potential adverse impacts arising from their operations. Properly implemented, this approach should not prevent trade, but will rather make it more responsible.⁴⁶ As detailed in the OECD Guidance, there are a range of sources available to companies making risk-based determinations;⁴⁷
- Require companies to adopt and implement a **risk management strategy** that allows for prevention or mitigation of identified risks within a specified

timeframe, but only where risks are not associated with significant adverse impacts, such as grave human rights abuses and conflict;

- Require **regular independent audits**. These are critical to the credibility of a company's due diligence system and provide investors, shareholders, consumers and any competent EU body overseeing audits with a detailed evaluation of a company's due diligence systems. Comprehensive audits should include a role for local civil society and incorporate consultation at mine sites, and audit reports should be made publically available in a timely and ongoing manner;
- Require **public disclosure of due diligence efforts**. Public disclosure is essential to the proper functioning and credibility of a due diligence-based approach. Transparent public disclosure of due diligence information, risk assessment measures, and the results of independent audits of due diligence systems allow for increased oversight by civil society and downstream purchasers and can support monitoring efforts by competent EU authorities. Furthermore, the publication of this information would complement the EU's broader transparency agenda;⁴⁸
- Consider introducing a **sanctions mechanism** alongside the due diligence reporting requirements for cases where companies wilfully ignore red flags in the supply chain and knowingly source natural resources that have funded conflict or human rights abuses. A mechanism may include a prohibition element applicable in such cases.⁴⁹

The EU Timber Regulation (EUTR) provides an emerging precedent for how the EU approaches mandatory supply chain due diligence and offers some lessons with regard to new EU due diligence legislation. The EUTR requires companies importing and trading timber products to carry out due diligence on their supply chains and prohibits placing timber on the EU market if it was illegally harvested. Learning from the strengths and weaknesses of the EUTR,⁵⁰ new due diligence legislation should:

- Be based on OECD due diligence standards and include an obligation for independent audits and public disclosure of company due diligence efforts.

The EUTR does not require independent audit or public disclosure of due diligence efforts, leaving investors, shareholders and consumers without proper assurance that due diligence is being done;

- Expressly state that the legislation applies to any natural or legal person established or registered in the EU, giving competent EU authorities the jurisdictional and practical capability to enforce sanctions where required;
- Clearly define requirements for company risk assessments and for a mitigation framework;
- Develop workable alternatives to the voluntary partnership model applied under the EUTR. These could be country or region-specific initiatives, based on context-specific policy dialogues with third countries or regions that go beyond due diligence requirements and which are developed in collaboration with partners and authorities on the ground.

Accompanying measures

Requiring European companies to source natural resources responsibly is a critical step in tackling and preventing natural resource-fuelled conflict.

However, in order to contribute to long-term stabilisation and development in countries where natural resources fuel conflict and human rights abuses, European legislation must form part of a wider and complementary approach that addresses the root causes of conflict and fragility.⁵¹ This may include tailored support to governance, security sector and natural resource management reforms in specific countries or regions, and should encourage respect for and promotion of human rights and rule of law.

The EU makes use of a wide range of external policies and financial instruments and should ensure that it identifies and builds on synergies between policy areas. European due diligence legislation should be complemented by development aid programmes, which aim to build the capacity of local authorities and local communities to manage their natural resources sustainably.

The consequences of inaction

Without legislation obliging companies to clean up their supply chains, we will be unable to verify what steps, if any, EU-based companies sourcing natural resources and raw materials from conflict-affected and high-risk areas are taking to prevent financing abusive groups and human rights abuses. Without legislation it is likely that natural resources and raw materials that fund conflict and human rights abuses, and products containing these, will continue to enter the EU.

Weak supply chain management by European companies contributes to violence and human rights abuses in resource-rich regions with catastrophic consequences for local populations and local economies. Conflict funded by the trade in sought-after commodities often causes mass displacement, food insecurity and ultimately prevents reconstruction efforts from taking hold.

The activities of unscrupulous businesses also cost European taxpayers money. The EU provides millions of Euros in development assistance to countries where populations are affected by natural resource-fuelled conflicts. Publically-funded development assistance aiming to increase security and stability is undermined when companies, including European firms, fuel instability through their purchases.

Demand for natural resources is increasing, and will continue to increase as new global economic actors emerge and markets expand. In order to avoid a global race to the bottom, the European Commission must ensure that those in its jurisdiction using natural resources source them in a way that benefits local populations in producing countries, as much as they benefit European businesses and consumers. With its significant market leverage the EU has an opportunity to influence global supply chains and incentivise other jurisdictions to take similar action. The best way for the EU to ensure that European companies do not contribute to conflict and abuses, is by introducing a regulation that is reasonable and effective and which sets out clear supply chain due diligence requirements for companies.

Endnotes

- 1 We use the terms 'natural resources' and 'raw materials' throughout this document to refer to natural resources and raw materials, including minerals, which, through production or trade, may fund or fuel conflict, instability or human rights violations. We consider that the obligations contained within a European regulation (and any particular articles thereof) should apply to any undertaking or natural person, whether or not resident or otherwise present in the European Union, initially placing the covered raw materials, or any product containing such materials, onto the market of any member state. Without prejudice to the generality of the term 'placing' in the preceding sentence, this term includes: supply, sale or distribution.
- 2 *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Renewed EU Strategy 2011-14 for Corporate Social Responsibility* available at <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF>.
- 3 For more information see the European Union Development and Cooperation Directorate website: europa.eu/pol/dev/.
- 4 G8 Lough Erne Declaration, June 2013, Article 40, www.gov.uk/government/uploads/system/uploads/attachment_data/file/207771/Lough_Erne_2013_G8_Leaders_Communique.pdf.
- 5 Global Witness and CCFD-Terre Solidaire, 27 January 2012, *EU takes step towards conflict-free supply chains*, www.globalwitness.org/library/eu-takes-step-towards-conflict-free-supply-chains; DG Trade, January 2012, *Trade, Growth and Development* p.15, http://trade.ec.europa.eu/doclib/docs/2012/january/tradoc_148992.EN.pdf.
- 6 For more information see www.oecd.org/daf/inv/mnel.
- 7 Human Rights Council, 16 June 2011, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework (A/HRC/17/31)*, Principle 25, Foundational Principle, www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf; European Parliament, 29 January 2013, *Resolution 2012/2097(INI) on Corporate Social Responsibility: promoting society's interests and a route to sustainable and inclusive recovery*, Recommendation 40, www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2013-0023&language=EN.
- 8 Including subcontractors, see also endnote 1.
- 9 We define 'global geographical scope' to mean that European due diligence legislation should not be region or country-specific but should require companies to undertake supply chain due diligence when sourcing natural resources from all conflict-affected and high-risk areas.
- 10 As the case studies outlined in this document demonstrate, trade in a wide range of natural resources can fund conflict. European companies trading in any natural resource should ensure that in doing so they are not contributing to human rights abuses or conflict.
- 11 Investigations show that individuals are often forced to work under dangerous and exploitative working conditions and fear for their health, well-being and personal security. In some cases the worst forms of child labour are involved, as well as the trafficking of women and children. Workers can be subjected to cruel and inhumane treatment and unlawfully detained by security forces based on unproven allegations (for example, refusing to provide a portion of daily earnings to security guards). See Amnesty International, 18 June 2013, *Profits and loss: Mining and human rights in Katanga, Democratic Republic of the Congo*, www.amnestyusa.org/research/reports/profits-and-loss-mining-and-human-rights-in-katanga-democratic-republic-of-the-congo.
- 12 UNEP, 2009, *From Conflict to Peacebuilding: the Role of Natural Resources and the Environment*, available at www.unep.org.
- 13 Conflict over natural resources may also be linked to other issues such as environmental damage or violent worker or civilian protests. International due diligence standards can help to address these issues. See: Friends of the Earth, *Mining for Smartphones: The True Cost of Tin*, www.foe.co.uk/resource/reports/tin_mining.pdf; Wikipedia, *Marikana miners' strike*, http://en.wikipedia.org/wiki/Marikana_miners'_strike; Western Sahara Resource Watch website, *The phosphate exports*, www.wsrw.org/a117x521.
- 14 Ignacio Gómez G, 2012, *Colombia's black-market coltan tied to drug traffickers, paramilitaries*; The Center for Public Integrity, 4 March 2012, www.publicintegrity.org/2012/03/04/8284/colombia-s-black-market-coltan-tied-drug-traffickers-paramilitaries; Kevin Boyd, 28 May 2009, *Federal Lawsuit Alleges U.S. Mining Company Drummond Paid Millions to Colombian Paramilitary* www.reuters.com/article/2009/05/28/idUS192843+28-May-2009+PRN20090528; Hannah Aronowitz, 16 March 2011, *Drummond paid Colombian paramilitaries: WikiLeaks Colombia Reports*, <http://colombiareports.co/us-coal-firm-drummond-paid-paramilitaries-wikileaks/>.
- 15 Massé F. et Camargo J., 2012, Toledo International Centre for Peace (CITpax), V Informe, p.7, *Actores Armados Ilegales y Sector Extractivo en Colombia*, www.toledopax.org/uploads/Actores_armados_ilegales_sector_extractivo.pdf.
- 16 Less than 10 percent of the mining titles have an environmental license and the Colombian government has designated an area of 17,089,085 hectares as a "Strategic Mining Area", mainly located in the Amazon region, a unique biosphere area, essential for the planet. See Contraloría General de la República, prec. and El Espectador, 12 June 2013, *Minería, latente en la Amazonia*, www.elespectador.com/noticias/medio-ambiente/articulo-427434-mineria-latente-amazonia.
- 17 Colombia's mining and oil municipalities make up 35 percent of the national total. 87 percent of

- forced displacements occur in these municipalities and those which receive royalties for mining and energy production. 78 percent of crimes against trade unionists, 89 percent of those committed against indigenous peoples and 90 percent of those against Afro-descendant peoples are committed in mining and energy-producing areas. See Colombian Comptroller General (*Contraloría General de la República*), May 2013, Mining in Colombia: Basics to overcome the extractive model, (*Minería en Colombia: Fundamentos para superar el modelo extractivista*).
- 18 Ariel Fernando Ávila, Coordinator of the *Observatorio del Conflicto at Corporación Nuevo Arco Iris*, interviewed on 15 March 2013 by Santiago Fischer for the Belgian Justice and Peace Commission. See Santiago Fischer (2013), *Vers la fin du conflit avec les FARC en Colombie ?*, Commission Justice et Paix, Brussels, www.justicepaix.be/?article681.
 - 19 Global Witness, 30 June 2005, *Under-Mining Peace: Tin - the Explosive Trade in Cassiterite in Eastern DRC*, www.globalwitness.org/library/under-mining-peace-tin-explosive-trade-cassiterite-eastern-drc; 31 July 2009, *Faced with a Gun What Can You Do?*; May 2011, *Congo's Minerals Trade in the Balance*, www.globalwitness.org/sites/default/files/library/Congo's%20minerals%20trade%20in%20the%20balance%20low%20res.pdf; May 2012, *Coming Clean*, www.globalwitness.org/sites/default/files/Coming_clean.pdf; May 2013, *Putting Principles into Practice*, www.globalwitness.org/sites/default/files/library/Putting%20principles%20into%20practice.pdf.
 - 20 Free the Slaves, June 2011, *The Congo Report: Slavery in Conflict Minerals*, http://freetheslaves.net/Document.Doc?id=243; Free the Slaves, June 2013, *Congo's Mining Slaves: Enslavement at South Kivu Mining Sites*, http://ftsblog.net/wp-content/uploads/2013/06/Congos-Mining-Slaves-web-130622.pdf.
 - 21 Amnesty International, June 2013, *Profits and Loss: Mining and human rights in Katanga*, available at www.amnesty.org.uk.
 - 22 United States G8 Partnership with Myanmar on Extractives, 14 June 2013, www.state.gov/e/enr/rls/ot/210632.htm; Yolanda Fong-Sam, *The Mineral Industry of Burma*, USGS 2010 Minerals Yearbook, http://minerals.usgs.gov/minerals/pubs/country/2010/myb3-2010-bm.pdf; Department of Geological Survey and Mineral Explanation, Government of The Republic of The Union of Myanmar, 13 March 2012, *Data Base Building in Ministry of Mines, Myanmar*, www.ccop.or.th/eppm/projects/36/docs/Myanmar_CCOPmetadata_presentation%20(13-03-2012).pdf.
 - 23 Tom Lantos Block Burmese Jade (Junta's Anti-Democratic Efforts) Act, Public Law 110-286, 29 July 2008, www.treasury.gov/resource-center/sanctions/Documents/pl110_286_jade_act.pdf; Aung Hla Ta, Reuters, 25 March 2011, *Myanmar gems sale nets record \$2.8 billion - official*, http://uk.reuters.com/article/2011/03/25/us-myanmar-gems-idUSTRE7202F120110325; Shibhani Mahtani and Patrick Barta, Wall Street Journal, 17 May 2013, *Secret Rocks*, http://online.wsj.com/article/SB10001424127887323372504578466933124542820.html; The Economist, 25 May 2013, *Democracy on Prescription*, www.economist.com/news/special-report/21578169-why-myanmars-military-rulers-are-giving-power-people-democracy-prescription; China Daily, 20 June 2013, *Troubled Copper Mine back on Track*, available at www.chinadaily.com.cn; Human Rights Watch, 29 July 2008, *Burma's Gem Trade and Human Rights Abuses*, www.hrw.org/legacy/english/docs/2008/01/11/burma17729.htm.
 - 24 Charu Lata Hogg and Matthew Smith, Chatham House, 4 March 2013, *Asia Meeting Summary - Human Rights in Burma*, p.5, www.chathamhouse.org/sites/default/files/public/Research/Asia/040313summary.pdf; Human Rights Watch, January 2012, *World Report 2012: Burma*, p.3, www.hrw.org/world-report-2012/world-report-2012-burma; Amnesty International, 16 January 2013, *Burma: Fresh air strike deaths in Kachin State as 'humanitarian crisis' looms*, www.amnesty.org.uk/news_details.asp?NewsID=20566; Institute for Human Rights and Business, 4 October 2012, p. 3, *Submission to the US State Department on US Reporting Requirements on Responsible Investment in Burma (Myanmar)*, www.ihrb.org/pdf/2012-10-04-IHRB-Submission-to-US-Dept-of-State-on-US-Reporting-Req-for-Burma.pdf.
 - 25 Global Witness, June 2012, *Financing a Parallel Government?*, www.globalwitness.org/library/financing-parallel-government-Zimbabwe.
 - 26 Krista Larson, May 2013, *In Central African Republic, Diamonds are Seleka rebels' best friend*, www.huffingtonpost.com/2013/05/06/central-african-republic-diamonds-rebels_n_3225410.html.
 - 27 Human Rights Watch, May 2013, www.hrw.org/news/2013/05/10/central-african-republic-rampant-abuses-after-coup.
 - 28 Grave human rights abuses and severe environmental degradation may also occur at mining sites that are not located in areas typically considered as conflict-affected or high risk. Examples include the violent response to protests of platinum miners in South Africa and the destruction of tropical forests and coral reefs associated with tin mining at the Indonesian island of Bangka. See BBC, 19 September 2012, *South Africa police fire at Marikana mine protesters*, www.bbc.co.uk/news/world-africa-19646264; Friends of the Earth, *Mining for Smartphones: The true cost of tin*, www.foe.co.uk/resource/reports/tin_mining.pdf.
 - 29 *The International Bill of Human Rights*, see: www.ohchr.org/Documents/Publications/Compilation1.1.en.pdf.
 - 30 See the UN 'Protect, Respect, Remedy' Framework. Pillar 1 of the Framework restates "the State duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication", www.ituc-csi.org/IMG/pdf/12-04-23_ruggie_background_fd.pdf; also *The Universal Declaration of Human Rights*, www.un.org/en/documents/udhr/.
 - 31 Under this obligation States may choose to develop early warning

- indicators that business enterprises can use to identify 'red flags' at the earliest possible stage. See www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.
- 32 Guiding Principle 7, Guiding Principles on Business and Human Rights, UNOHCHR, 2011.
- 33 See final rule for Dodd Frank Section 1502, www.sec.gov/rules/final/2012/34-67716.pdf.
- 34 See UN Security Council Resolution 1952 (2010), [www.un.org/ga/search/view_doc.asp?symbol=S/RES/1952\(2010\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1952(2010)).
- 35 *Arrêté ministériel N.0057.CAB.MIN/MINES/01/2012 du 29 février 2012 portant mise en œuvre du mécanisme régional de certification de la Conférence Internationale sur la Région des Grands-Lacs « CIRGL » en République Démocratique du Congo*, Article 8.
- 36 See the ICGLR Regional Mineral Certification Manual: www.oecd.org/investment/mne/49111368.pdf.
- 37 In DR Congo, companies bought minerals that had funded armed groups and members of the Congolese army for years, despite complaints to OECD National Contact Points and even UN sanctions, see Global Witness, 4 September 2009, *New report undermines DRC mineral traders' due diligence claims*, www.globalwitness.org/library/new-report-undermines-drc-mineral-traders%E2%80%99-due-diligence-claims.
- 38 Global Witness, 24 July 2013, *Global Witness applauds D.C. Court's decision to uphold conflict minerals provision*, www.globalwitness.org/library/global-witness-applauds-dc-court%E2%80%99s-decision-uphold-conflict-minerals-provision.
- 39 SOMO conducted a company survey of 186 European-registered companies from 10 sectors and initial findings show that 152 companies make no reference to conflict minerals or responsible mineral sourcing on their website. SOMO publication pending, October 2013.
- 40 Global Witness, 21 August 2012, *Implementing the Conflict Minerals Provision - The cost of business as usual*, www.globalwitness.org/library/implementing-conflict-minerals-provision-cost-business-usual.
- 41 Green Research, January 2012, *The Costs and Benefits of Dodd Frank Section 1502: A Company Level Perspective*, available at www.sec.gov/comments/s7-40-10/s74010-470.pdf.
- 42 See Global Witness Congressional testimony, 21 May 2013, <http://financialservices.house.gov/uploadedfiles/hhrg-113-ba19-wstate-spickles-20130521.pdf>.
- 43 See <http://europa.eu/youreurope/business/profitting-from-eu-market/>.
- 44 To ensure that raw materials have not funded conflict, companies must undertake supply chain due diligence that meets the OECD standard. The European Commission should not make exceptions for any natural resource in this respect. Supply chains of 'critical' commodities identified in the EU Raw Material Initiative should be subject to the same responsible sourcing standards as those of other natural resources.
- 45 A regulation should cover designated raw materials or any product containing these materials, including manufactured end products, first placed on the market in any EU member state (see endnote 2).
- 46 A regulation should require companies to use the risk assessment component of the OECD Due Diligence Guidance, to ensure that companies engage in comprehensive supply chain management that addresses all types of transactions along the supply chain that may benefit warring parties.
- 47 See the OECD Due Diligence Guidance: "Relevant information will include public reports (from governments, international organisations, NGOs, and media), maps, UN reports and UN Security Council sanctions, industry literature relating to mineral extraction, and its impact on conflict, human rights or environmental harm in the country of potential origin, or other public statements (e.g. from ethical pension funds)", www.oecd.org/daf/inv/mne/GuidanceEdition2.pdf.
- 48 Global Witness, 12 June 2013, *EU vote marks birth of global transparency standard - G8 to pick up the challenge*, www.globalwitness.org/library/eu-vote-marks-birth-global-transparency-standard-%E2%80%93-g8-pick-challenge, and Christian Aid, 24 May 2013, *EU on verge of 'historic breakthrough' for tax justice*, www.christianaid.org.uk/pressoffice/pressreleases/may-2013/eu-on-verge-of-historic-breakthrough-for-tax-justice.aspx.
- 49 The Model Supply Chain Policy for a Responsible Global Supply Chain of Minerals from Conflict-Affected and High-Risk Areas contained within Annex II of the OECD Due Diligence Guidance recommends that companies should "immediately suspend of discontinue engagement with upstream suppliers where we identify a reasonable risk that they are sourcing from, or linked to, any party committing serious abuses", see www.oecd.org/daf/inv/mne/GuidanceEdition2.pdf.
- 50 Global Witness, 28 May 2013, *Three quarters of Ghana's new logging permits could break Europe's new timber law*, www.globalwitness.org/ghanapermits; BBC Online, 22 July 2013, *Has the EU fallen for Congo rainforest logging scam?*, www.bbc.co.uk/news/world-africa-23358055.
- 51 See Mark B. Taylor, 21 May 2013, *Conflict Financing: what's wrong with war economies?*, www.peacebuilding.no/Themes/Armed-violence-and-conflict-in-fragile-settings/Publications/Conflict-financing-what-s-wrong-with-war-economies.





Additional signatories: Acidi Congo (South Kivu), DRC; Action des Chrétiens Activistes des Droits de l'Homme à Shabunda (ACADHOSHA), DRC; Centre National d'Appui au Développement et à la Participation Populaire (CENADEP), DRC; Centre for Trade Union and Human Rights (CTUHR), Philippines; Fair Trade Centre, Sweden; Free the Slaves, US; Mark Taylor of FAFO Institute for Applied International Studies Oslo, Norway; Shan Sapawa, Burma; Voder, DRC.

